IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.45 OF 2006

IN

NOTICE OF MOTION NO.117 OF 2006

IN

SUIT NO.571 OF 1975

Oberoi Constructions Pvt.Ltd. and ors. ...Appellants

v/s

New Padmavati Co-op. Housing Society Ltd. and ors. ...Respondents

Mr D.D. Madon, Sr. Counsel with Mr B.B. Saraf i/b Ms Krishna Tanna for Appellants.
Mr M.U. Pandey for Respondent No.1 in support.
Mr V.B. Dhawan for Respondent Nos.5 to 7.
Mr P.N. Modi i/b Mr R. Singh for Respondent Nos.8 and 10.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 25TH OCTOBER 2007.

P.C. :-

1. By consent of parties and without prejudice to the rights and contentions of the parties, the appeal is disposed off in following terms.

1) The order impugned in the appeal which admittedly is an ad-interim order passed by the learned Single Judge in notice of motion No.117 of 2006 shall remain stayed till notice of motion No.117 of 2006 is finally heard by the learned Single Judge. The learned Single Judge is requested to hear notice of motion No.117 of 2006 as expeditiously as possible.

2) By consent of parties, the District Inspector of Land Records and City Survey Officer, Malad, Mumbai is appointed as Commissioner for the following purpose :-

i) The Commissioner shall first obtain from the Office of the Collector certified copy of the order dated 22nd November 2005 (copy of which is at Exh.'M' to this appeal compilation) alongwith copy of the plan which is mentioned by the Collector in the order. The Collector

is directed to supply certified copy to be sworn by the Collector immediately.

ii) After obtaining certified copy of the order and the plan as directed above, the Commissioner, at the expenses of the plaintiffs - respondents, construct the boundary wall between city survey No.110/B/3 and city survey No.95/1 of village Dindoshi as per the order of the Collector dated 22nd November 2005 and the plan annexed thereto.

iii) The Commissioner shall as far as possible take up the construction of the boundary wall in the presence of representatives of both the sides.

iv) It is made clear that the boundary wall is being constructed for the purpose of avoiding disputes between the parties on the spot during the pendency of the suit and till the motion is decided.

v) The Commissioner, while constructing the boundary wall as directed above, shall ensure that C.T.S. No.110/B/3 is of the

area of 941.07 sq.mtrs. as per the property card relied on by the plaintiffs - respondents.

. Appeal is disposed off. In view of the order passed in appeal, notices of motion Nos.284 of 2006 and 1318 of 2006 do not survive for consideration. Notices of motion are disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary of the Court.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)